

CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 04/16/02

AGENDA ITEM 3A

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Request for Approval of an Assignment Agreement for Standard Pacific and Acacia Credit Fund 7, LLC (Subdividers/Owners) - South of 92 - Oliver West

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution that approves the Assignment to Standard Pacific and Acacia Credit Fund 7, LLC of rights and obligations of the Mt. Eden Business and Sports Park Community Development Agreement from the Oliver trusts and its related entity, Oliver Properties, LLC.

DISCUSSION:


At the time the City Council approved the South of 92 project, there was an understanding that there would be a single developer for the entire site, and the conditions of approval reflect that understanding. Instead, there are separate developers for the Oliver East and Oliver West portions of the project. In September 2001, the City Council approved an assignment agreement to Duc Housing Partners covering the assignment of rights and obligations relative to the east side of the South of 92 project. At that point it was anticipated that a similar assignment would be sought for the west side of the South of 92 project along with the processing of a final map on the west side. At that time the Council also approved a division of the conditions of approval between developers of the two sides of the project, i.e., the residential side (Oliver West) and the business park side (Oliver East). The responsibility for improvements east of the railroad tracks and the flood control channel, including the 25-acre sports park, are primarily the responsibility of the developer of Oliver East. The bridge structure crossing over the flood control channel and the railroad rights-of-way, the buffer between housing and the habitat preserve area, and the neighborhood parks are primarily the responsibility of the housing developer of Oliver West. These obligations are reflected in the Subdivision Agreement for Final Map 7317.

The City Council is being asked to approve an assignment to Standard Pacific and Acacia Credit Fund 7, LLC ("Acacia") of the rights and obligations under the Development Agreement as it pertains to Oliver West. (See Exhibit A.) Staff has been informed that Oliver Properties, LLC, which obtained Oliver West from the original owner, sold Oliver West to Standard Pacific. Standard Pacific has informed staff that it has entered into a "rolling option" agreement with Acacia, which made Acacia the current legal owner of Oliver West. A rolling option provides a builder/developer the opportunity to purchase property in increments at a predetermined price and time.

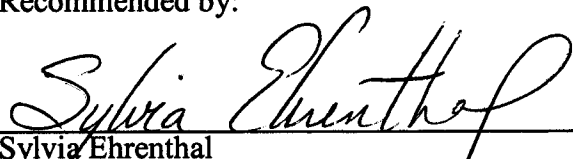
The attached Assignment and Assumption Agreement ("Assignment") describes the various changes in ownership of Oliver West since the execution of the Development Agreement in 1999. The Development Agreement requires the City's consent in order for these transfers to effectively convey any development rights. Under the Assignment, the development rights pertaining to Oliver West, and the corresponding obligations, are assigned to and assumed by Standard Pacific and Acacia jointly. Both Standard Pacific and Acacia are liable for performance of the obligations under the Development Agreement and are required to post adequate security for the performance of those obligations. Acacia shall remain liable under the Development Agreement until such time as all the Oliver West parcels are conveyed back to Standard Pacific.

Staff has reviewed the financial capability of both Standard Pacific and Acacia and has determined that both entities have the financial capacity to perform the obligations they are assuming under the Assignment. As additional assurance of performance, under the Assumption Agreement approved by the City Council last year in connection with the first final map, Duc Housing Partners, Inc., retains ultimate responsibility for performance of all the obligations relative to the development of both Oliver East and Oliver West and cannot be released from such liability without the express written consent of the City.

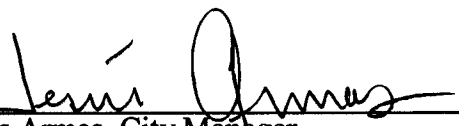
Prepared by:


Dyana Anderly, AICP
Planning Manager

Recommended by:


Sylvia Ehrental
Director of Community and Economic Development

Approved by:


Jesús Armas, City Manager

Attachments: Exhibit A: Assignment Agreement
Draft Resolution

4/11/02

WHEN RECORDED, MAIL TO:

City Attorney
City of Hayward
777 B Street
Hayward, CA 94541-5007

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (herein "this Agreement") is entered by and between STANDARD PACIFIC CORP., a Delaware corporation ("Developer/Assignor"), and ACACIA CREDIT FUND 7 L.L.C., a Delaware limited liability company ("Assignee"), effective as of March __, 2002.

RECITALS

- A. Developer/Assignor is a successor-in-interest by assignment to the rights of Oliver Properties, LLC, a California limited liability company ("Oliver Properties"), which entity was a successor-in-interest by assignment to the rights of The Gordon Oliver Estate and Trust and The Alden Oliver Trust (such two trusts being collectively referred to herein as the "Oliver Trusts") under that certain Mount Eden Business and Sports Park Community Development Agreement (herein "the Development Agreement") with the City of Hayward ("City"), recorded December 13, 1999, as Series No. 1999443129 of the Official Records of Alameda County, California, which relates to the development of, among other property, the real property described on Exhibit "A" attached hereto and incorporated herein by this reference (herein "Oliver West").
- B. The assignments of the Development Agreement from the Oliver Trusts to Oliver Properties, and from Oliver Properties to Developer/Assignor have not been approved by the City prior to the date of this Agreement.
- C. Effective June 28, 2001, Developer/Assignor entered into a rolling option arrangement with Assignee, which arrangement grants Developer/Assignor the exclusive option to repurchase all or portions of Oliver West from Assignee (the "Option to Repurchase"). Such rolling option arrangement contemplates that Developer/Assignor will exercise its option to repurchase upon the development of the Oliver West parcels in accordance with the terms of the Development Agreement.
- D. With each purchase of a portion of Oliver West pursuant to the Option to Repurchase, Assignee will reassign to Developer/Assignor all of Assignee's interests under the Development Agreement with respect to each such portion of

Oliver West purchased by Developer/Assignor (herein the "Assigned Parcel(s)").

- E. Assignee meets the requirements of Article 6 of the Development Agreement for obtaining the City's consent to an assignment of Assignor's rights thereunder with respect to Oliver West.
- F. Article 6 of the Development Agreement requires the consent of the City to the assignment.

AGREEMENTS

NOW, THEREFORE, DEVELOPER/ASSIGNOR AND ASSIGNEE HEREBY AGREE AS FOLLOWS:

1. For good and valuable consideration, the receipt of which is hereby acknowledged, Developer/Assignor does hereby, sell, transfer, assign, convey and deliver to Assignee all of the rights and interest of the "Owner" under the Development Agreement with respect to Oliver West. Notwithstanding the foregoing assignment from Developer/Assignor to Assignee, Developer/Assignor shall remain obligated to, and shall, fully perform all of the duties and obligations of the "Owner" under the Development Agreement with respect to Oliver West, which duties and obligations arose and/or accrued at any time prior to or during the period Developer/Assignor had any legal or equitable interest in all or any portion of Oliver West, and shall be subject to all the terms and conditions thereof. Upon the execution of this Agreement and written consent of the City of Hayward, Assignee shall become substituted for Developer/Assignor as the "Owner" under the Development Agreement with respect to Oliver West.
2. Following the date of the City's consent to the covenants, terms and conditions of this Agreement, upon each transfer by Assignee to Developer/Assignor of an Assigned Parcel, and the assignment to Developer/Assignor of the interests of Assignee under the Development Agreement with respect to each Assigned Parcel, the City will be deemed to have automatically consented to each such assignment without the necessity of any further action on the part of Assignee, Developer/Assignor or the City, and Developer/Assignor shall become substituted for the Assignee as the "Owner" under the Development Agreement with respect to all rights of the "Owner" relating to the Assigned Parcel(s). Each of Developer/Assignor and Assignee, alone, shall have all of the rights of the "Owner" under the Development Agreement with respect to the portions of Oliver West held in fee title by such party from time to time.
3. Notwithstanding any other provision of this Agreement, Developer/Assignor and Assignee each hereby assumes and agrees to perform all of the "Owner's Obligations" under the Development Agreement with respect to Oliver West. At such time as Assignee no longer owns any portion of Oliver West, Assignee shall be released from all of the "Owner's Obligations" under the Development Agreement, provided neither Developer/Assignor nor Assignee is in

default of the Development Agreement.

4. Developer/Assignor and Assignee each hereby acknowledges and agrees that development of Oliver West is subject to all of the burdens and obligations of the "Owner" of Oliver West under the Development Agreement and Developer/Assignor and Assignee are each obligated to, and shall, fully perform all of the duties and obligations of the "Owner" under the Development Agreement with respect to Oliver West. Developer/Assignor and Assignee each further acknowledges and agrees that Duc Housing Partners, Inc. ("Duc") and Hayward Oliver Owners LLC ("HOO") (Duc and HOO being sometimes collectively referred to herein as the ("Oliver East Parties")) have specific obligations under the Development Agreement with respect to the parcel of real property adjacent to, and to the east of Oliver West ("Oliver East") and Developer/Assignor's and Assignee's right to develop and/or transfer Oliver West may be affected by the Oliver East Parties' performance and/or failure to perform such obligations under the Development Agreement with respect to Oliver East. The obligations referenced in the immediately preceding sentence are the construction of the Sports Park Complex and the other Phase 1 improvements set forth in Conditions of Approval Nos. 8 and 9 to Vesting Tentative Map Tract 7065. The failure of the Oliver East Parties to perform said obligations may result in the City withholding development rights for Oliver West, including, but not limited to, the withholding of certificates of occupancy and seeking termination of the Development Agreement pursuant to the provisions of Section 10.1 of the Development Agreement. Developer/Assignor and Assignee are each entitled to cure the Oliver East Parties' default by either performing the obligations or providing financial security in one of the forms set forth in Government Code §§66499-6499.10 to be determined by City. In the event that construction of the Sports Park Complex is not substantially completed or has not progressed to the satisfaction of the City by July 1, 2002, and after demand by the City to, and the failure of the Oliver East Parties to provide an irrevocable letter of credit in the manner required by that certain Assumption Agreement entered into between the Oliver East Parties and the City, effective September 25, 2001 (the "Assumption Agreement"), Developer/Assignor or Assignee shall provide to the City, upon fifteen (15) days' written notice, an irrevocable letter of credit securing completion of the Sports Park. Should Developer/Assignor or Assignee, after having posted the letter of credit and having taken over the construction of the Sports Park, fail to comply with any of the milestone dates indicated below, with such dates being extended by the period of any delay caused by the default of the Oliver East Parties, the City shall have the right to accelerate the dates for the remainder of construction of the Sports Park. The requisite letter of credit shall secure performance of all remaining construction according to the plans for the Sports Park and not be limited to the Oliver East Parties' performance then due under the milestone dates indicated below. Developer/Assignor and Assignee each acknowledges that the Oliver East Parties and the City have agreed to the following milestone dates for construction of the Sports Park:

- 11/15/01 - Completion of rough grading of the site
- 12/31/01 - Commence construction of the buildings
- 04/02/02 - Completion of AC Parking Lot
- 05/15/02 - Completion of the buildings

07/01/02 - Substantial Completion of the Sports Park

5. In consideration of the City's agreement to cooperate with Developer/Assignor and/or Assignee, following a default by the Oliver East Parties in their obligations under the Development Agreement with respect to Oliver East, in making the proceeds of any security held by the City for the performance of the Oliver East Parties' obligations under the Development Agreement (the "Oliver East Security"), with respect to the improvements required to be constructed by the Oliver East Parties in connection with the development of Oliver East, available to Developer/Assignor and/or Assignee for reimbursement of the costs incurred by Developer/Assignor and/or Assignee in the completion of such required improvements, Any party receiving such reimbursement agrees to indemnify, defend, protect and hold the City harmless from and against any and all claims, demands, liabilities, causes of action, costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred by the City as a result of making the proceeds of the Oliver East Security available to Developer/Assignor and/or Assignee in reimbursement of the costs incurred by either of both of such parties in so completing any of such required Oliver East improvements.

6. Nothing in this Agreement is intended to release, or releases, the Oliver East Parties from the burdens and obligations it assumed pursuant to the Assumption Agreement.

7. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, successors and assigns.

8. This Agreement shall be recorded in the Office of the Alameda County Recorder.

9. The individuals executing this Agreement represent and warrant that they have the right, power, and legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Developer/Assignor and the Assignee.

IN WITNESS WHEREOF, the parties hereto do hereby agree to the full performance of the terms set forth herein.

DEVELOPER/ASSIGNOR

STANDARD PACIFIC CORP., a
Delaware corporation

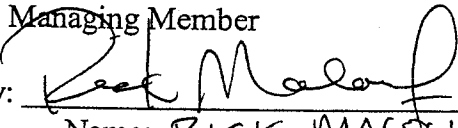
By: St. J. Silva
Title: DIVISION PRESIDENT

ASSIGNEE

ACACIA CREDIT FUND 7 L.L.C.,
a Delaware limited liability company,

By: Fund 7 Management Company L.L.C., a
Delaware limited liability company, its
Managing Member

By: Acacia Capital Corporation,
a California corporation,
its Managing Member

By: 
Name: rick macouf
Title: U.P.

CITY OF HAYWARD CONSENT

The City Council of the City of Hayward hereby (i) consents to the covenants, terms and conditions of the foregoing Assignment and Assumption Agreement, (ii) ratifies and approves the prior assignments of the Development Agreement from the Oliver Trusts to Oliver Properties, and from Oliver Properties to Developer/Assignor, and (iii) agrees to cooperate with Developer/Assignor and Assignee, following a default by the Oliver East Parties in their obligations under the Development Agreement with respect to Oliver East, in making the proceeds of the Oliver East Security, with respect to the improvements required to be constructed by the Oliver East Parties in connection with the development of Oliver East, available to Developer/Assignor and/or Assignee for reimbursement of the costs incurred by Developer/Assignor and/or Assignee in the completion of such required improvements, by Resolution _____ on _____.

By _____
Jesús Armas
City Manager, City of Hayward

Attest: _____
Angelina Reyes, City Clerk

Approved as to form:

City Attorney

STATE OF CALIFORNIA)
)ss
COUNTY OF Santa Clara

On March 6, 2002, before me, a notary public in and for said state, personally appeared Steven G. DeVog, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument

Lila L. Thompson
Notary



STATE OF CALIFORNIA)
)ss
COUNTY OF _____)

On _____, 2002, before me, a notary public in and for said state, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument

Notary

EXHIBIT "A"

LEGAL DESCRIPTION OF OLIVER WEST

LEGAL DESCRIPTION

REAL PROPERTY in the City of Hayward, County of Alameda, State of California, described as follows:

PARCEL ONE:

Beginning at the Southwest corner of Section 4, Township 4, South, Range 2 West, Mount Diablo Base and Meridian, according to the Official Plat thereof; running thence along the Southern line of said Section 4; East 2640 feet; thence North 1320 feet to the Southern line of the Northwest 1/4 of the Southeast 1/4 of said Section 4; thence along the last named line and along the direct extension thereof, East 1320 feet to the direct extension Southerly of the Eastern line of said Northwest 1/4; thence along last said extended line, Northerly to the Southwestern line of Hesperian Boulevard, formerly Telegraph Road or County Road No. 90; thence along the last named line Northwesterly to the Southern line of the Parcel of land secondly described in the Deed by Investors and Promoters to Hayward Water Company, dated July 1, 1915, recorded July 16, 1915, in Book 2344 of Deeds, Page 359, Alameda County Records; thence along the last named line and along the direct extension thereof, Westerly 2536.05 feet, more or less, to the Southwestern line of the right of way 80 feet wide of the Southern Pacific Company, formerly the South Pacific Coast Railroad; thence along the last named line Southeasterly 1460 feet, more or less, to the Southern line of the 18.37 acre tract of land described in the deed by Adolph A. Oliver and Emilie Oliver to John M. Gerrard, dated October 11, 1937, recorded November 2, 1937, in Book 3559 of Official Records of Alameda County, Page 173; thence along the last named line Westerly, 1154.76 feet to the Western line of said Section 4; thence along the last named line, South 2715 feet, more or less, to the Point of Beginning.

EXCEPTING THEREFROM:

1. That portion thereof, which lies Northeasterly of the Northeastern line of the land condemned by Alameda County Flood Control and Water Conservation District, Final Order of Condemnation recorded July 1, 1960, Reel 118, Official Records, Image 914, Instrument No. AR77039.
2. That portion thereof described as Parcels 1 and 3 in the Judgment in Condemnation filed October 16, 1959 in the Superior Court Alameda County, Case No. 277357, Alameda County Flood Control and Water Conservation District, Plaintiff vs. Millicent B. Schaefer, et al., defendants, certified copy thereof recorded November 23, 1959, Book 9219, Official Records, Page 485, Instrument No. AQ138124, and July 1, 1960, Reel 118, Official Records, Image 914, Instrument No. AR77039.

A.P. No.: 461-0035-006 and 007

PARCEL TWO:

The easements and other rights reserved unto the defendants in the final Judgments in Condemnation entered October 16, 1959, and July 1, 1960 in the Superior Court for Alameda County, Case No. 277357, Alameda County Flood Control and Water Conservation District, Plaintiff, vs. Millicent E. Schaefer, et al., defendants, certified copies of which were recorded November 23, 1959, Book 9219 Official Records, Page 485, Instrument No. AQ/138124, and July 1, 1960, Reel 118 Official Records, Image 914, Instrument No. AR/77039.

PARCEL THREE:

The non-exclusive easements contained in the Construction Easement Agreement recorded July 19, 2001, Series No. 2001257736, Official Records.

EXHIBIT A

ASSESSOR'S MAP 461

Code Area Nos. 15-001

25-076
25-089

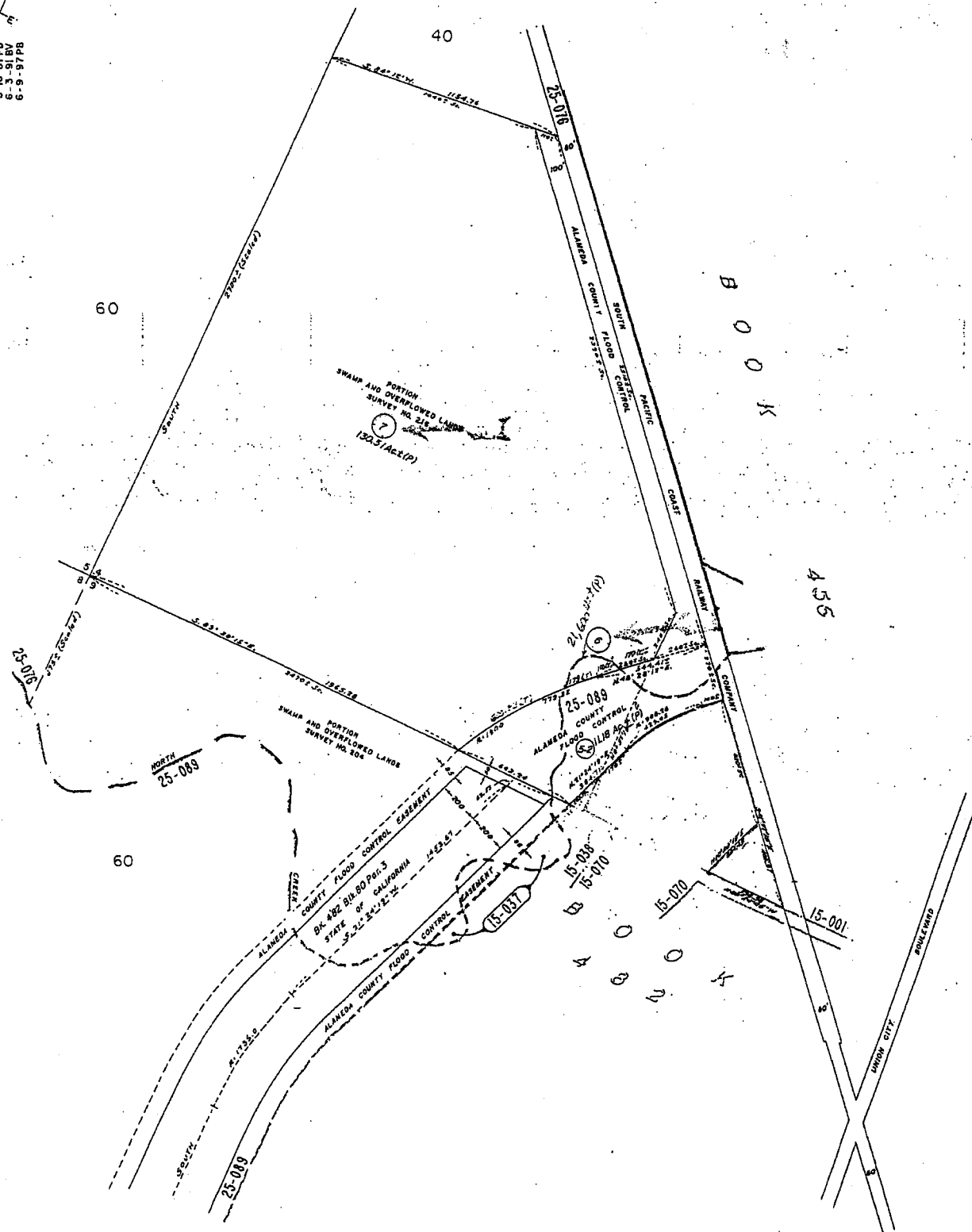
35

Scale: 1" = 400'

SWAMP AND OVERFLOWED LANDS
(T.4 S. R.2 W.)
R.S. 380 (R.S.Bk.7 Pg.48)

DRAWN 9-12-61 H.L.
Corrected: 10-19-79 RM
10-3-86 RG
3-16-87 PG
6-3-91 BV
6-9-97 PB

Primarily: Beck 786 Partion Block 2535



A.C.M. 21 & 25

Reference: Case 2 - 20 - 12

A-11



March 18, 2002

Mr. Jesus Armas
City Manager
City of Hayward
777 B Street
Hayward, CA 94541-5007

Re: Request for Consent to Assignment of Rights under Mt. Eden
Business and Sports Park Community Development Agreement

Dear Jesus:

As you are aware, the rights of the "Owner" under the Mt. Eden Business and Sports Park Development Agreement were previously assigned by The Alden Oliver and Gordon E. Oliver Trusts to Oliver Properties, LLC, and thereafter assigned by Oliver Properties to Standard Pacific in connection with our purchase of the Oliver West Parcel. Since none of those assignments were consented to by the City, we are now requesting that the City approve the past assignments to and by Oliver Properties, and consent to our assignment of our rights under the Development Agreement to Acacia Credit Fund 7 LLC ("Acacia"), in accordance with the provisions of the forms of assignment agreements we previously provided you.

As we have related, on June 28, 2001, Standard Pacific entered into an arrangement, commonly known as a "rolling option" arrangement, with Acacia. A rolling option provides a Builder/Developer the opportunity to purchase property in increments at a predetermined price and time. The option is secured by a deposit that is forfeitable in the event the purchaser elect not to exercise its option for future purchases. In accordance with this arrangement, Standard Pacific then transferred title to the Oliver West Parcel to Acacia. Concurrently with the transfer of title to Acacia, Standard Pacific and Acacia entered into an Option Agreement and a Construction Agreement. Pursuant to the terms of the Option Agreement, Standard Pacific has the exclusive right and option to purchase the lots contained within the Oliver West Parcel in Phase I by April 2002 and the entire property by November 2003. In accordance with the terms of the Construction Agreement, Standard Pacific agreed to perform the construction of the on-site and off-site improvements required for the development of the Oliver West Parcel. This rolling option transaction with Acacia provides Standard Pacific working capital to use for the

Mr. Jesus Armas

March 18, 2002

Page 2

development of the Property. Improvements to Phase I, including the overcrossing, are expected to be in excess of \$25,000,000.

Standard Pacific, one of the nation's largest publicly traded homebuilders, has built homes for more than 47,000 families during its 36-year history. The Company focuses its efforts on constructing move-up homes within a wide range of price and size. Standard Pacific operates in some of the strongest housing markets in the country with operation throughout the major metropolitan areas in California, Texas, Arizona and Colorado. In 2001, the Company delivered in excess of 1300 homes with revenues of \$1.38 billion and net income \$111.1 million. Standard Pacific's strong financial performance has earned it a position on the Forbes Platinum 400 list for two years in a row.

Acacia is one of the largest non-bank providers of lot financing in the United States. Acacia has had direct responsibility for the acquisition, entitlement, financing, development, operation, and disposition of numerous properties of various types. Since 1992, Acacia has financed single-family subdivisions containing a total of 22,600 building lots and having a total cost of \$860 million. These projects have been diversified geographically and have been completed with 27 builder clients. Projects representing \$590 million of aggregate cost (81% of the portfolio) have sold out, generating total lot sale revenues of \$700 million. Acacia's lot financing has been concentrated primarily with large publicly traded homebuilders.

In summary, Standard Pacific has the financial strength, experience and commitment to make Eden Shores one of the premier neighborhoods in the Bay Area.

Thank you for your continuing courtesy and cooperation.

Very truly yours,



STEVEN G. DELVA
Division President

SGD: _____

OK Rat
mar
4/10/02

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER
TO NEGOTIATE AND EXECUTE THE ASSIGNMENT
AND ASSUMPTION AGREEMENT OF THE MOUNT
EDEN BUSINESS AND SPORTS PARK DEVELOPMENT
AGREEMENT

BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes and directs the City Manager to negotiate and execute the Assignment and Assumption Agreement by Standard Pacific Corporation and Acacia Credit Fund 7 LLC, of the rights and obligations of the Mount Eden Business and Sports Park Community Development Agreement, recorded December 13, 1999.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2002

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward